TEXAS HISTORICAL COMMISSION
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June 2, 2017

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Re: Wireless Infrastructure Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket Nos. 17-79 and 15-180

Ms. Dortch:

Thank you for the Public Notice of April 21, 2017, concerning WT Docket Nos. 17-79 and 15-180, "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment," which proposes a thorough reassessment of the Federal Communications Commission's (FCC) regulatory framework, especially regarding the National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA). This letter serves as comment on the final Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) from the Texas State Historic Preservation Officer (SHPO), the Executive Director of the Texas Historical Commission (THC).

We share many of the same goals as the FCC and the industry when it comes to streamlining the regulatory review process for telecommunications infrastructure. We recognize that telecommunications technology continues to evolve and serve ever-growing demands, but in general, we believe that the existing Nationwide Programmatic Agreements and related guidance from the FCC and the Advisory Council on Historic Preservation (ACHP) effectively balance the needs of the industry without jeopardizing our irreplaceable cultural heritage.

Since 2014, THC has reviewed nearly 3200 FCC projects, with an average review time of 19 days; since the start of 2016, we have reviewed over 970 projects (including many batched submittals with multiple sites), with an average review time of less than 9 days. Since 2014, only 8 projects (0.25%) were found to have an adverse effect on historic properties. Of these, 6 were part of a single network of small cell antennae proposed within a National Historic Landmark Historic District and all 6 projects were subsequently revised as to have no adverse effect—a perfect illustration of the value of the Section 106 consultation process.

Enclosed, please find additional comments on specific items in the NPRM and NOI. We look forward to further consultation with your office, the ACHP, the National Conference of State Historic Preservation Officers, our local partners, and other interested stakeholders, and we hope to maintain a relationship that will foster effective historic preservation. If you have any questions concerning our comments, or if we can be of further assistance, please contact Justin Kockritz at 512-936-7403 or justin.kockritz@thc.texas.gov.

Sincerely,

Mark Wolfe

Mark Wolfe
State Historic Preservation Officer

cc: Stephen Del Sordo, Federal Communications Commission *via email*
Erik Hein, National Conference of State Historic Preservation Officers *via email*
Anthony Guy Lopez, Advisory Council on Historic Preservation *via email*

Section II.A.1 "Deemed Granted" Remedy for Missing Shot Clock Deadlines

- Item 10—Irrebuttable Presumption
  Setting a reasonable absolute limit for a SHPO review, beyond which failure to act results in a deemed grant of approval, appears to be appropriate. However, we do want to stress that the time limit should apply only to a SHPO's failure to act or respond to the submission of a *complete* application, not to the final resolution of the Section 106 consultation.

- Item 14—Lapse of State and Local Governments' Authority
  Outlining a process by which the FCC may revoke a state or local government's authority to review projects if the locality fails to meet its review obligations appears to be appropriate only if: 1) the FCC can demonstrate the locality's failure to meet obligations is a long-running pattern, not an isolated or time-limited failure, 2) the locality is given the opportunity to rebut the claims, and 3) there is a process by which the locality can re-assume its review authority.

Section II.A.2 Reasonable Period of Time to Act on Applications

- Item 18
  The reasonable periods of time that the FCC proposed in 2009—90 days for collocation applications and 150 days for other applications—appear to be appropriate. THC could support a shorter review period for new structures less than fifty (50) feet tall, or where structures are located within or adjacent to existing utility rights-of-way (but not transportation rights-of-way) with existing utility structures taller than the proposed telecommunications structure. THC does not support shortened review periods for *batched* DAS applications as they have thus far been frequently proposed in historic districts or for collocation on/in historic buildings.

- Item 20
  As per 36 CFR Part 800, THC believes that the "shot clock" for review should not begin until the SHPO receives an "adequately documented finding," including information on the proposed undertaking, the identification of historic properties, and the assessment of potential effects to any historic properties. THC does not impose a "pre-application" period, but we understand why some localities may do so.

Section II.A.3 Moratoria

- Item 22
  THC has not implemented moratoria on the processing of wireless siting applications, and we have no knowledge of moratoria by others in Texas.

Section II.B Reexamining NHPA and NEPA Review

- Item 24
  We concur that any amendments to the existing Nationwide Programmatic Agreements cannot be undertaken without appropriate public comment, and the concurrence of the ACHP and the National Conference of State Historic Preservation Officers.

Section II.B.2.a Need for Action

- Item 34
  Consultation with local governments, the SHPO, THPOs, the public, and other identified stakeholders is a necessary and fundamental component of the Section 106 review process. Compliance with Section 106, and its implementing regulations at 36 CFR Part 800, is an obligation of the responsible Federal agency, though the FCC, through extensive consultation leading to the Nationwide Programmatic Agreements, has in turn, delegated much of this authority to their applicants. THC believes that this already represents a massive streamlining, allowing the industry to initiate consultation, prioritize projects, and manage their

overall workload in ways that would not be possible if the FCC administered each step of the review process. The Nationwide Programmatic Agreements also significantly reduce the requirements to identify historic properties as applicants must only conduct a record search of previously evaluated properties, and do not have to conduct a field survey to identify other historic properties within the visual area of potential effect, as is required for federal undertakings under 36 CFR Part 800.

- Item 38
  While THC obviously cannot and does not speak for any Tribal Nations, we would like to state that sacred burial grounds are not the only types of properties that may hold historic, religious, or cultural significance, and potential effects to other significant sites should not be dismissed.

- Item 39
  There are no fees associated with THC's review of federal undertakings subject to Section 106. There is no project review application fee, no fee for registering with or using our online project review submittal portal, and no fee for viewing or downloading information from our Historic Sites Atlas. A separate Archeological Sites Atlas, which contains confidential site information, is also free but is generally limited to professional archeologists. If the FCC or its applicants are experiencing difficulties related to fees charged for consultation by other entities, those difficulties should be resolved through the FCC's consultation with the ACHP. The ACHP can and should, at very least, issue guidance to address this situation.

  THC does not believe that review by the SHPO and review by the local government are duplicative, even if conducted by a Certified Local Government (CLG) issuing a Certificate of Appropriateness. Local historic preservation ordinances may not account for historic properties unless specifically designated as a local landmark or within a locally designated historic district, they may not consider or even have jurisdiction over indirect or cumulative effects to historic properties (as is required by 36 CFR Part 800), they may not consider or be aware of archeological sites, or they may not consider effects to building interiors (for DAS installations). Also, CLG staff and local commissioners may not meet the Secretary of the Interior's Professional Qualifications Standards and may rely on the SHPO for technical guidance. Finally, review by the SHPO and local government are meant to complement each other—where the local government has in-depth knowledge of local history, the SHPO may have a better sense of broader historic contexts and certainly have more experience reviewing federal undertakings under Section 106.

  Only very rarely has THC review resulted in changes to the proposed project. Most often, these changes have been a reduction in height for new towers within or near historic properties, specifying particular installation methods (i.e. using rooftop ballast sleds rather than anchoring antennae into historic masonry), or aesthetic changes (i.e. using a stealth monopole or installing screening or landscaping at the tower base).

II.B.2.b.ii Other NHPA Process Issues

- Item 60
  The best guarantee of a timely review by THC is for the applicant to transmit a full and complete submittal, including an "adequately documented finding" and any additional information that may be necessary. For instance, submitting an initial application for a collocation on a historic building without including sufficient information on the proposed method and/or location of installation, causes unnecessary delay.

- Items 62–63
  We have found the batching of PTC project reviews largely successful, and utilizing a similar approach for other types of applications may be appropriate, based on the project type, consistency of equipment and installation, expected impacts, and geographic proximity. THC recommends a geographic area of no larger than a county, but in urban areas a much smaller footprint is more appropriate. In all cases, each batch should include a cover document with an overall map showing and labeling all proposed locations, site maps

for each location, adequate installation and construction information, and detailed addresses or latitude and longitude.

II.B.2.b.iii NEPA Process

- Item 65
  THC could support a targeted categorical exclusion for DAS sites located on/in buildings that are less than 45 years of age that are not listed in, nor previously determined eligible for listing in, the National Register, and where the antennae are installed to not be visible from a National Register-listed or -eligible property.

II.B.2.c.i Pole Replacements

- Item 68
  THC could support broader exemptions for replacement of existing telecommunications towers, but does not support including poles that were not originally constructed for the purpose of carrying communications antennae. In historic districts, light poles and even utility poles may themselves be character-defining features, and their replacement without Section 106 consultation could result in adverse effects to historic properties.

II.B.2.c.ii Rights-of-Way

- Items 69–71
  THC does not support a blanket exclusion of tower construction or DAS installation in transportation rights-of-way. Perhaps an exemption could be appropriate for towers within designated Interstate highway rights-of-way where existing structures of similar size (i.e. other communications towers, buildings, overpasses or billboards) are in proximity. THC does not support defining "transportation right-of-way" in any way other than to include existing limited-access highways; any definition that includes surface level streets, residential or commercial neighborhoods, or future road or highway construction is not appropriate and would undoubtedly lead to adverse effects to historic properties. Otherwise, the existing Nationwide Programmatic Agreements should remain in place.

II.B.2.c.iii Collocations

- Item 73
  THC opposes excluding collocations located between 50 and 250 feet of a historic district from review. Depending on the boundaries of the historic property, reducing this distance to 50 feet could mean collocations directly across the street from historic properties are exempt from review, even if highly visible.

- Item 75
  Similar to Item 39 above, THC does not support excluding projects from SHPO review that are also reviewed by a local government, even if conducted by a CLG issuing a Certificate of Appropriateness.

II.B.3 Collocations on Twilight Towers

- Item 82
  At the January 2016 Non-Compliant Towers Discussion Meeting, the FCC appeared committed to seeking a solution to the Twilight Tower issue that included both an approach to identify non-compliant towers that caused adverse effects to historic properties and providing for meaningful mitigation, both for the foreclosure of the opportunity for the ACHP, SHPO, THPOs, and other stakeholders to comment on the initial tower construction and for any specific adverse effects to historic properties. We agree that the issue of Twilight Towers and non-compliant towers should be resolved, but THC does not support a blanket post hoc clearance of such towers.